

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR
Writ Petition No.7056 of 2012

M.Baskar

... Petitioner

-Vs-

- 1.Commissioner / Disciplinary Authority
Corporation of Chennai, Rippon Buildings
Chennai - 600 003.
- 2.Appointment Committee / Appellate Authority
Rippon Buildings, Chennai - 600 003.
- 3.State of Tamilnadu, rep.by its Secretary
Department of Municipal Administration
and Water Supply (Reviewing Authority)
Fort St.George, Chennai - 600 009. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records and quash the order Ma.Aa.4 Na.Ka.No.A2/8150/07 dated 24.04.2010 passed by the 2nd respondent read with order Ma.Aa.4 Na.Ka.No. A2/8150/07 dated 15.12.2009 passed by the 1st Respondent and direct the Respondents to restore the Petitioner to the post of Driver with all other consequential benefits and continuity of service.

For Petitioners : Ms.D.Nagasaila

For Respondents : Ms.Karthika Ashok,
Standing Counsel
- for RR 1 and 2
Ms.K.Bhuvaneswari,
Additional Govt.Pleader - for R3

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O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records and quash the order Ma.Aa.4 Na.Ka.No.A2/8150/07 dated 24.04.2010 passed by the 2nd respondent read with order Ma.Aa.4 Na.Ka.No. A2/8150/07 dated 15.12.2009 passed by the 1st Respondent and direct the Respondents to restore the Petitioner to the post of Driver with all other consequential benefits and continuity of service.

2. The petitioner was initially appointed as conservancy worker at the respondent Corporation. Thereafter, after rendering some years of service, he was posted as Lorry Driver. When he was working as Lorry Driver, an accident took place on 29.09.1999, whereby the vehicle driven by the petitioner met with an accident resulting in death of a person, pursuant to which, the petitioner had been suspended on the very same day from service and simultaneously a criminal case was also filed against him. After some months of suspension, the said suspension order was revoked and he has been reinstated into service on 08.11.1999 and from that date he has been continuously working.

3. Thereafter, disciplinary action was initiated for the accident that took place on 29.09.1999 and three charges were framed against the petitioner, pursuant to which, enquiry was conducted and ultimately the Enquiry Officer filed his report dated 08.03.2000, in which he had stated that, all the charges framed against the petitioner were not proved. After the Enquiry Officer's report, it seems that no action was taken by the first respondent / disciplinary authority and at one point of time, in the year 2009, when the petitioner had requested to regularize his suspension as duty period, that might have triggered the respondents to take up the file and accordingly, on the alleged reason that, some more materials have been obtained from the Transport Department based on which, the disciplinary authority had disagreed with the views expressed by the Enquiry Officer and accordingly he passed an order on 15.12.2009, whereby he inflicted the punishment of compulsory retirement on the petitioner.

4. As against the said order passed by the first respondent being the disciplinary authority on 15.12.2009, the petitioner preferred an appeal to the second respondent, who also, after having considered the said appeal, disposed of the same on 24.04.2010, whereby the second respondent / appellate authority has modified the punishment into reduction in one rank and also the suspension period, which the petitioner had undergone between 29.09.1999 and 10.11.1999 was treated as service without pay.

5. Aggrieved over the order passed by the first respondent / disciplinary authority as well as the second respondent appellate authority dated 15.12.2009 and 24.04.2010 respectively, the petitioner has filed this writ petition with the aforesaid prayer.

6. Heard Ms.Nagasaila, learned counsel appearing for the petitioner, who would submit that, no doubt there had been an accident on 29.09.1999, pursuant to which a death has occurred, for which absolutely the petitioner is not responsible and there has been no negligence on the part of

the petitioner. In this regard, not only the Enquiry Officer who conducted the enquiry in the disciplinary proceedings has given a report stating that none of the charge against the petitioner were proved, but also in the criminal case, the petitioner has been acquitted.

7. When that being the position, if at all the first respondent / disciplinary authority wants to differ with the views expressed by the Enquiry Officer, for which if the disciplinary authority claims that, some new materials have been obtained from the Transport Department, those materials should have been placed before the delinquent / petitioner and a minimum opportunity of making his defence should have been given and thereafter the further decision could have been taken. However, without following the said procedure, straight away the impugned order of compulsory retirement has been passed against the petitioner by the first respondent and only a modification order was given by modifying the punishment into reduction in one rank. Therefore, both the disciplinary authority as well as appellate authority has not considered the issue in proper perspective in the context of the available materials as well as the evidence, particularly in the context of the report submitted by the Enquiry Officer. Therefore, the learned counsel for the petitioner seeks the indulgence of this Court against both the impugned orders.

8. Per contra, learned Standing Counsel for the Chennai Corporation would submit that, no doubt the Enquiry Officer has stated that, the charges were not proved against the petitioner. However, the disciplinary authority has every right to disagree with such findings given by the Enquiry Officer, for which if the disciplinary authority has got specific reasons, that cannot be found fault with. In this regard, the learned Standing Counsel would further submit that, in the impugned order itself, the disciplinary authority has stated that further materials have been received from the Transport Department and only on going through the same, and after having satisfied with the same, the disciplinary authority has taken such action to disagree with the views expressed by the Enquiry Officer and accordingly, for the charges framed against the petitioner and the additional materials received and perused by the first respondent being disciplinary authority, he came to the conclusion that, after proving the charges, punishment can be imposed and accordingly the punishment of compulsory retirement was imposed.

9. With regard to the proportionality of the punishment, the second respondent / appellate authority, while considering the appeal filed by the petitioner, has applied his mind and decided the issue in proper perspective by which the appellate authority has decided the revised punishment by way of modification and by thus, the major punishment of compulsory retirement has been converted into reduction in rank and therefore that would be a proportionate punishment at least

for the proven charges, for which the additional materials can very well be taken into account. Therefore, the Standing Counsel would submit that, both the orders passed by the first respondent disciplinary authority as well as the second respondent appellate authority are liable to be sustained. Hence, she submits that no interference is called for from this Court against those orders.

10. I have considered the rival submissions made by the learned counsel on either side and also perused the materials placed on record.

11. As has been rightly pointed out by the learned counsel for the petitioner, first of all the three charges framed against the petitioner have been found not proved as per the report of the Enquiry Officer. Thereafter, if at all the disciplinary authority wants to differ with the views expressed by the Enquiry Officer and for the said purpose, if the disciplinary authority states that, there are further materials received by him, those materials should have been placed before the delinquent and without which, unilaterally the disciplinary authority cannot come to his own conclusion that, the charges framed against the petitioner have been proved.

12. In this regard, it is also to be noted that, the criminal case filed against the petitioner also ended in acquittal. Therefore, with this concurrent finding both in the disciplinary proceedings as well as in the criminal case, where the charges framed against the petitioner in both proceedings have been declared to be not proved, it is very hard to accept the theory projected by the respondents that, based on the subsequent materials received from the Transport Department, the disciplinary authority has come to the conclusion that the charges against the petitioner have been proved. When that was pointed out by filing an appeal filed by the petitioner before the appellate authority ie., the second respondent, he has also not considered the issue in proper perspective except to modify the punishment from compulsory retirement to reduction in one rank.

13. Though in disciplinary proceedings, the degree of proof is preponderance of probabilities only, in the present case all the three charges framed against the petitioner, after enquiry, have been found to be not proved by the report of the Enquiry Officer and when that being so, the disciplinary authority, if at all wants to differ with any of the views expressed by the Enquiry Officer, he must have stated the reason for taking such a different view from that of the view expressed by the Enquiry Officer.

14. On a perusal of the impugned order passed by the first respondent, no such reason has been given by the disciplinary authority except to state that subsequently some materials were obtained from the Transport Department.

15. What materials were obtained by the disciplinary authority and what is the veracity of those documents, whether there are any materials in the documents subsequently received to come to the conclusion that the charges framed against the petitioner have been proved, have not been spelt out either in the order passed by the first respondent or prior to that, by way of a show cause notice to the delinquent.

16. In fact, no such show cause notice with regard to the additional materials allegedly obtained by the disciplinary authority has been given to the delinquent and therefore, the said reason given by the first respondent to come to a different conclusion than the one reached by the Enquiry Officer, cannot be accepted in the eye of law.

17. Further, these aspects have not been considered in proper perspective by the appellate authority also, who has simply modified the punishment and has not given any view as to how the disciplinary authority has taken a different view than the one expressed by the Enquiry Officer.

18. For all these reasons, since the respondents, both the disciplinary authority as well as the appellate authority have not considered the issue in proper perspective, essentially in the manner known to law, for conducting and concluding the disciplinary proceedings, this Court feels that, the impugned orders are liable to be interfered with. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

19. That both the impugned orders viz., Ma.Aa.4 Na.Ka.No. A2/8150/07 dated 15.12.2009 passed by the first respondent and Ma.Aa.4 Na.Ka.No.A2/8150/07 dated 24.04.2010 passed by the second respondent, are hereby quashed. As a sequel, the petitioner shall be entitled to get posting as Lorry Driver with effect from 29.09.1999 and the suspension period between 29.09.1999 to 10.11.1999 shall be regularized as duty period with all benefits. Consequently, all subsequent service and attendant benefits shall be notionally conferred on the petitioner from the date of suspension till date and the said service shall be counted for all other purposes, which includes pay fixation notionally and for pensionable benefits. With regard to the aforesaid directions, a revised order shall be passed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

20. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

KST

To

1.Commissioner / Disciplinary Authority
Corporation of Chennai, Rippon Buildings
Chennai - 600 003.

2.Appointment Committee / Appellate Authority
Corporation of Chennai, Rippon Buildings, Chennai - 600 003.

3.The Secretary to Government
Department of Municipal Administration
and Water Supply (Reviewing Authority)
Fort St.George, Chennai - 600 009.

+1cc to Ms.Karthika Ashok, , Advocate SR.No. 19384

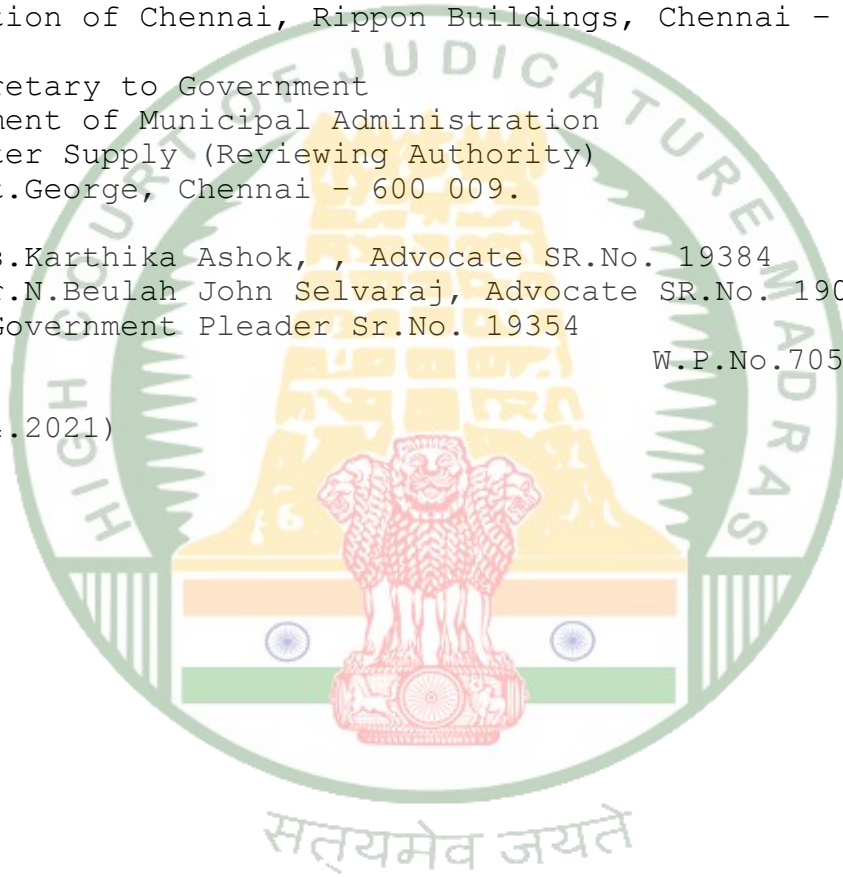
+1cc to Mr.N.Beulah John Selvaraj, Advocate SR.No. 19008

+1 cc to Government Pleader Sr.No. 19354

W.P.No.7056 of 2012

pcj co

A.SK(09.04.2021)



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